

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

08 JUN -4 PM 1:02

MICHAEL LYNN WATERS

PLAINTIFF

11 C07-4683 CRB (PR)

v.

A.W. COOK

DEFENDANT(S),

"
PART (1) MOTIONS
(1 - 11)"

OPPOSITION TO DEFENDANT(S)
MOTION TO DISMISS: NOTICE OF
MOTION,
AND

PLAINTIFF NOW SUBMIT MOTION
FOR SUMMARY JUDGMENT IN HIS
FAVOR UNDER RULE (56)-(d)+(f).
FOR PRODUCTION OF SAID DOCUMENTS
IN THIS (2) TWO PART MOTION:
ATTACHED AND REQUEST FOR RELIEF:

TO DEFENDANT(S) C. WILBER, F. JACQUEZ, R. HOREL, J. ROBERTSON,
D. MELTON, M. COOK, C. PATTEN, R. BELL, AND R. LINFOR.
REPRESENTED BY LILY KORMAN: DEPUTY ATTORNEY GENERAL,
PLEASE ACKNOWLEDGE THAT PLAINTIFF, MICHAEL LYNN WATERS, IN PRO SE
NOW REQUEST THIS COURT TO GRANT SUMMARY JUDGMENT IN HIS
FAVOR UNDER FEDERAL RULE OF CIVIL PROCEDURE (56) SECTIONS (d)+(f).

PLEASE TAKE FURTHER NOTICE THAT PLAINTIFF "SHALL" PROVIDE EVIDENCE
TO THIS COURT FOR THE "ONLY" EVIDENCE IN DISPUTE WITHIN DEFENDANT(S)
MOTION TO DISMISS AND NOTICE OF MOTION: (SEE - WYATT V. TERHUNE,
315 F.3d, 1108, 1119-20 (9TH CIR. 2003) THESE MOTIONS ARE BASED ON
UNDISPUTED FACTS. "NO" OTHER EVIDENCE COULD OVERCOME:

STATEMENTS OF THE ONLY ISSUE PRESENTED
TO THIS COURT BY DEFENDANT(S)

THE (PLA) STATES: EXHAUSTION MAY NOT BE REQUIRED IF YOU CAN SHOW THAT YOU WERE UNABLE TO FILE A GRIEVANCE THROUGH "NA" FAULT OF YOUR OWN, SA YOU SHOULD DEFINITELY GO THROUGH THE GRIEVANCE PROCESS UNLESS YOU ARE TRULY UNABLE.

THE EXHAUSTION REQUIREMENTS UNDER 42 U.S.C.A. § 1997e(a) STATES. IN PART: A PRISONER MUST FIRST FILE AN INMATE GRIEVANCE OR COMPLAINT FORM PROVIDED BY YOUR PRISON. (NOT ONLY DO YOU HAVE TO FILE THIS FORM- BUT YOU ALSO NEED TO WAIT FOR (A) RESPONSE AND APPEAL THAT RESPONSE AS FAR UP AS POSSIBLE.)

STATEMENTS OF FACTS, ARGUMENT AND PLAINTIFFS EVIDENCE THAT HE DID EXHAUST WHAT ADMINISTRATIVE GRIEVANCE CONCERNING DELIBERATE INDIFFERENCE TO HIS SAFETY AND DUE PROCESS.

PLAINTIFF REQUEST HERE THAT THE (WARDEN OF CORCORAN STATE PRISON BE CONTACTED) AND ALLOW PLAINTIFF TO RECEIVE "ALL" LEGAL PAPER WORK FROM HIS PERSONAL PROPERTY, AS L.T. A. DIAZ > SGT. MACDONALDO, SGT. LOPEZ, PROPERTY OFFICER THOMAS, LEGAL MAIL/PICK UP OFFICER RUBACABA, AND THE (ICC) CHAIR PERSON ON 5/21/08 > ARE PUNISHING PLAINTIFF AGAIN FOR NOT DOUBLE CELLING WITH ANOTHER INMATE AND HAS REFUSED PLAINTIFF ANYTHING.

PLAINTIFF HAS (ALL) OF THE TRUE COPIES OF DEFENDANT C. WILBER APPEAL REJECTIONS CONCERNING ALL ISSUES OF EXHAUSTION. AS THESE REJECTIONS TO PROCESS PLAINTIFF'S COMPLAINT- C. WILBER

1 BECAME A DEFENDANT IN THIS CIVIL-ACTION. AS EXPLAINED
2 AND SUBMITTED TO THE DIRECTOR'S LEVEL OF APPEALS:
3 PRISON OFFICIALS VIOLATE THE EIGHTH AMENDMENT WHEN THEY
4 ACT WITH DELIBERATE INDIFFERENCE TO A PRISON CONDITION THAT
5 EXPOSES A PRISONER TO AN UNREASONABLE RISK OF SERIOUS
6 HARM. (HELLING V. MCKINNEY, 509 U.S. 25, 33 (1993), (FARMER V.
7 BRENNAN, 511 U.S. 825, 835 (1994).

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IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA
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MICHAEL LYNN WATERS
PLAINTIFF,

C07-4683 CRB (PR)

v.

A.W. COOK
DEFENDANT(S)

(PROPOSED) "ORDER
GRANTING PLAINTIFF'S MOTION
TO ALLOW HIM ACCESS TO ALL
LEGAL MATERIALS IN HIS
PERSONAL PROPERTY TO
PRODUCE EVIDENCE IN THIS
CIVIL ACTION;

THIS IS A CIVIL ACTION / RIGHTS SUIT FILED UNDER 42 U.S.C.
§ 1983 BY A STATE PRISONER, PLAINTIFF, MICHAEL LYNN WATERS,
PLAINTIFF ALLEGES THAT HE ONLY NEEDS ACCESS TO THE LEGAL
MATERIALS WITHIN HIS PERSONAL PROPERTY, AS PLAINTIFF'S PERSONAL
PROPERTY IS LOCATED IN A.C.H. OR ANY OTHER PART OF CORCORAN
STATE PRISON.

PLAINTIFF MAY HAVE ACCESS TO LEGAL MATERIALS WITHIN HIS
PERSONAL PROPERTY TO PRODUCE EVIDENCE IN THIS COURT FOR THE
EXHAUSTION OF SAID ADMINISTRATIVE REMEDIES (MENTION) IN THE
DEFENDANT'S MOTION TO DISMISS FOR PLAINTIFF "NOT" EXHAUSTING
THE ADMINISTRATIVE REMEDIES AVAILABLE BEFORE FILED, THIS
CIVIL ACTION. AFTER FULL CONSIDERATION OF ALL PLEADINGS AND
GOOD CAUSE APPEARING, THE COURT GRANTS PLAINTIFF'S MOTION
(TO) PROVIDE HIM ACCESS TO HIS PERSONAL PROPERTY FOR LEGAL
MATERIALS TO PROVIDE/PRODUCE HIS EVIDENCE OF EXHAUSTION
BEFORE ANY FURTHER RULINGS IN THIS CASE.

IT IS SO ORDERED: THAT PLAINTIFF HAVE ACCESS TO HIS LEGAL
MATERIALS IN HIS PERSONAL PROPERTY NO LATER _____

1 THAN _____ DAYS FROM SIGNED ORDER.
2
3

4 DATED:

HON. CHARLES BREYER
UNITED STATES DISTRICT JUDGE

DEFENDANT(S) ACKNOWLEDGMENT OF FACTS

1 SEE (PAGE - 4) LINES (25-28) STATES: PLAINTIFF DOES
 2 REFERENCE AN ADMINISTRATIVE GRIEVANCE IN HIS COMPLAINT,
 3 INMATE APPEAL NUMBER (06-00110) (COMPL. 3. 1-4, COMPL. EX. K.)
 4 IN IT, PLAINTIFF REQUESTED SINGLE CELL STATUS AND THAT THIS
 5 STATUS BE BASED ON HIS MENTAL HEALTH ISSUES. (COMPL. EX. K.)
 6 THIS APPEAL WAS SUBMITTED ON NOVEMBER 6, 2005, AND WAS
 7 GRANTED AT (THE) SECOND LEVEL OF REVIEW.

THE PROCESS VIOLATION

9 DEFENDANT D. MELTON HERSELF. SEE PLAINTIFF'S COMPLAINT. WROTE
 10 ON THE INMATE REQUEST FORM TO INMATE RECORDS THAT PLAINTIFF
 11 REFUSED TO DOUBLE CELL WHILE IN (EOP), SHE ALSO WROTE OUT THE
 12 (BMU) REVIEW PLACEMENT SLIP AND SHE WAS ON THE (UCC) TO PLACE
 13 PLAINTIFF IN (BMU). AS PLAINTIFF STATED IN (UCC) ON THE 128-G
 14 WRITTEN BY D. MELTON: I/M STATED: I WILL SEE YOU IN COURT.
 15 ALSO, CHAIR PERSON: CAPTAIN BELL, THIS INFORMATION WAS KNOWN
 16 TO DEFENDANT(S) C. WILBER, R. MOREL, J. ROBERTSON, M. COOK, AND
 17 R. LINFOR. WHO FALSIFIED DOCUMENTS OF (ICC) SHEET 3/8/06 IN
 18 WHICH IS A CRIME. OFFICER KUNZ TOOK THE SINGLE CELL HERSELF.

DEFENDANT(S) FABRICATED COMPLAINT

20 THEY APPEARED DETERMINED TO FORCE THE EVIDENCE TO CONFORM
 21 TO THEIR PRECONCEIVED NOTIONS OF WHAT THEY WANT TO SEEM TRUE:
 22 JUST BEFORE (DEC 22, 2006) IN WHICH INMATE JONES WAS BEAT DOWN
 23 IN (B-8) BY (2) BLACK GANG MEMBERS ON THIS DATE, A PRODUCTION
 24 OF THE ORDER WOULD SHOW THAT THE BLACK + WHITE INMATES
 25 WERE TO BECOME SEPARATED FOR ANY SCHEDULE CALL OUTS, MEDICAL
 26 AND LAW LIBRARY FOR (BMU) INMATES, DUE TO BLACK INMATES AND
 27 SKIN HEADS.
 28 A MISTAKE WAS MADE SOMEWHERE AND THE BLACK INMATES

1 FROM (BMU) WERE ESCORTED TO THE LAW LIBRARY. (5) OF
 2 US. BLACK INMATES AND (1) INDIAN. (2) KNOWN SKIN HEADS
 3 WERE IN THE LAW LIBRARY. WHITE INMATES (JOHN + HIS CELLIE
 4 CHRIS)

5 AFTER BEING READY TO GO BACK TO (BMU), IN WHICH (JOHN +
 6 CHRIS) WAS IN (BMU) AND SAME SECTION (A).

7 JOHN + CHRIS WALKED OUT FIRST. FOLLOWED BY PLAINTIFF
 8 (MYSELF) AND THEN ANOTHER BLACK INMATE, AS INMATE CANADA,
 9 WHO IS BLACK WAS COMING OUT THE DOOR. INMATE JOHN, RUSHED
 10 TOWARD INMATE CANADA. WHO TOOK OFF RUNNING FROM INMATE
 11 JOHN. THEN INMATE CHRIS TOOK OFF RUNNING AT INMATE-
 12 CANADA.

13 THE BLACK INMATES WERE UPSET THAT INMATE CANADA WAS
 14 JUMPED, HOWEVER, NOT KNOWING INMATE CANADA HAD RAN.
 15 INMATE JOHNSON + HIS CELLIE, BLOOD GANG MEMBERS, ASK
 16 PLAINTIFF TO GET INMATE JONES, BECAUSE INMATE JONES
 17 WHO IS BLACK STATED: PLAINTIFF LEFT INMATE CANADA ALONE
 18 TO FIGHT, AND DIDN'T HELP HIM.

19 PLAINTIFF CLEARLY TOLD JOHNSON + ALL OTHER BLACK INMATES
 20 THAT INMATE CANADA RAN, AND THAT PLAINTIFF WOULD NOT ALLOW
 21 ANY YOUNG GANG MEMBER TO TELL HIM ANYTHING. THAT HE
 22 WOULD LEAVE BEFORE KILLING ONE OF THEM. THE YOUNG BLOOD
 23 + CRIP INMATES FELT THAT THEY WOULD BEAT ON PLAINTIFF
 24 DURING DAYROOM. PLAINTIFF HAD (2) ICE PICKS TIED IN BOTH
 25 HANDS. AS PLAINTIFF ASKED "ALL" BLACK INMATES TO ENTER THE
 26 DAYROOM. JUST BEFORE DAYROOM, C/O WOOLWORTH STATED THAT
 27 CAPTAIN FOSS HAD CALLED AND SAID, "NO" DAYROOM FOR LEVEL-
 28 1 (BMU) INMATES. JUST LEVEL 2 + 3 ONLY.

1 OFFICER WOOLWORTH SPOKE WITH PLAINTIFF ABOUT THIS
 2 SOMETIME LATER, I TOLD C/O WOOLWORTH TO TELL CAPTAIN FOSS
 3 HE STOPPED SOMEONE FROM BEING KILLED? BECAUSE PLAINTIFF
 4 WASN'T GOING TO STOP FOR NOTHING. IT WAS (8) AGAINST
 5 (1), PLAINTIFF.

6 ON DEC 22, 2006, WHILE INMATE JONES, WAS OUT FOR SHOWER,
 7 INMATE JOHNSON + HIS CELLIE CALLED (OFFICER SILCOX) WHO
 8 LET THEM OUT OF THEIR CELL TO BEAT DOWN INMATE JONES.
 9 INMATE JOHNSON + HIS CELLIE WERE LET OFF FROM THEIR 115'S
 10 TO 128'S FOR HORSE PLAYING? INMATE JONES WAS TAKEN TO
 11 AD-SEC. PLAINTIFF WAS PENDING AD-SEC ON DEC 29, 2006,
 12 AND STILL RECEIVED A (128) FOR REFUSING (BYW) CLASS?
 13 SEE COMPLAINT.

14 SEE (1030) SHEET IN COMPLAINT DONE BY CCI- D. MERTON, SHE
 15 SPOKE WITH PLAINTIFF AND STATED: I DON'T UNDERSTAND HOW
 16 JOHNSON + HIS CELLIE GOT OUT OF GOING TO THE HALL? THIS
 17 IS WHEN PLAINTIFF LEARNED OF WORD SPREADING TO ALL BLACKS
 18 WITHIN PELICAN BAY STATE PRISON.

19 PLAINTIFF CONTENTS THAT HE IS TOO OLD TO GANG BANG OR ALLOW
 20 ANY BLACKS TO CONTROL HIS LIFE. PLAINTIFF TURNED AGAINST
 21 THEM BECAUSE EVEN IN JAIL, THERE ARE SOCIAL CLASSES,
 22 INMATES NEED TO FEEL MORALLY SUPERIOR TO SOMEONE,
 23 THAT SOMEONE WASN'T PLAINTIFF, I NEED MENTAL HEALTH
 24 TREATMENT, NOT TO ENCOUNTER NOR BE SUPPORTIVE OF NON-
 25 SENSE.

MEMORANDUM OF POINTS AND AUTHORITIES

INTRODUCTION

1 IF A DECISION BY PRISON OFFICIALS RESULTS IN CONDITIONS THAT
 2 A SEVERE ENOUGH TO MEET THE "SIGNIFICANT AND ATYPICAL"
 3 STANDARD, THE PRISON MUST GIVE THE INMATE PROCEDURES LIKE
 4 A HEARING AND A CHANCE TO PRESENT EVIDENCE. COURTS HAVE
 5 FOUND DUE PROCESS VIOLATIONS WHEN PRISONERS ARE DISCIPLINED
 6 WITHOUT THE CHANCE TO GET WITNESS TESTIMONY, HAVE A HEARING,
 7 OR PRESENT EVIDENCE, SOME CASES IN WHICH THESE TYPES OF CLAIMS
 8 WERE SUCCESSFULLY MADE ARE:
 9 (AYERS V. RYAN, 152 F.3d 77 (2d CIR. 1998) (TAYLOR V. RODRIGUEZ,
 10 238 F.3d 188 (2d CIR. 2001). AND (HATCH V. DISTRICT OF COLUMBIA,
 11 184 F.3d 846 (D.C. CIR. 1999).

12
 13 A PRISON HAS VIOLATED THE PLAINTIFF'S DUE PROCESS BY THE SAME
 14 STANDARD SET OUT UNDER (SANDIN V. CONNOR, APPLIES; SEE - 515 U.S.
 15 472 (1995). YOU MUST SHOW THAT THE TRANSFER RESULTED IN
 16 CONDITIONS THAT WERE A "SIGNIFICANT OR ATYPICAL DEPARTURE FROM
 17 THE ORDINARY INSTANCES OF PRISON LIFE."

TRANSFER TO CORCORAN STATE PRISON

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 19
 20 PLAINTIFF IS BEING PUNISHED AGAIN FOR NOT DOUBLE CELLING, WHEN
 21 HE ASKED TO PRESENT EVIDENCE IN ICC AT CORCORAN. C/O MARTINEZ,
 22 TOOK IT AND SAID: YOU KNOW BETTER THAN THAT. ICC CHAIR PERSON
 23 STATED ON 5/21/08: I DON'T CARE WHAT THE ATTORNEY GENERAL SAYS,
 24 I'M TAKING YOUR SINGLE CELL, STATING: YOU WILL SEE MY NAME ON 128-C
 25 L.T. A. DIAZ, STATED: I DON'T GIVE A "F--K" WHAT THE ATTORNEY
 26 SAID. YOU GOT WHAT YOU HAVE COMING. GENERAL
 27 PLAINTIFF HAS (NO) TOOTH BRUSH, TOOTHPASTE, CLEANER, MATTRESS,
 28 CUP, SPOON, WITH A "GRANULOMA" ON RIGHT LITTLE FINGER.

CONCLUSION

1
2 PLAINTIFF CONTENTS THAT SEVERAL MISTAKES HAD BEEN
3 MADE BY OFFICIALS, ONE COVER UP LEAD TO CIRCUMSTANCES
4 THAT BECAME ENTIRELY OUT OF CONTROL.
5 AS THINGS CONTINUE TO GET WORSE WITH MASSIVE
6 VIOLATIONS OF PROFESSIONAL RESPONSIBILITIES, CONSTITUTIONAL
7 RIGHTS, AND ABOVE ALL ELSE, OFFICIALS HAVE ASSOCIATED WITH
8 PRACTICE OF EVIL-INTENT VIOLATIONS.

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11 RESPECTFULLY

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14 5/30/08
15 DATED:

MICHAEL LYNN WATERS

PLAINTIFF'S REQUEST FOR RELIEF

1 PLAINTIFF REQUEST THAT:

2 1) TO REMOVE THE FALSIFIED 128-G WRITTEN BY CCH- LINFAR
3 OF 3/8/06 FROM PLAINTIFF'S C-FILE TO DOUBLE CELL,

4
5 2) TO REMOVE THE 128-G WRITTEN BY CCH- EDWARDS ON 4/23/08
6 TO TRANSFER PLAINTIFF TO CORCORAN AND DOUBLE CELL. HE DID
7 FALSIFY DOCUMENTS.

8 3) TO REMOVE ANY AND ALL 128'S AND 115'S WRITTEN BETWEEN
9 3/6/06 — JAN 11, 2007, AS WELL AS SAID REPORTS TO DOUBLE CELL.

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11 4) TO PLACE A SINGLE CELL STATUS UP DATED IN PLAINTIFFS C-FILE.
12 AND THAT PLAINTIFF RECEIVE A COPY AS WELL.

13
14 5) TO PLACE PLAINTIFF IN A (PSU) PROGRAM OR (CHC) PROTECTIVE
15 UNIT. DUE TO MENTAL HEALTH ISSUES AND MANY ENEMIES.

16 6) TO RECEIVE MY PROPERTY HERE IN A) - SEC AS OTHER
17 INMATES WHO ARE PROGRAMMING IN (3A03).

18 7) AND ANY OTHER RELIEF THIS COURT SEE SUITABLE IN THIS
19 CASE.

20
21 PLAINTIFF RESPECTFULLY REQUEST THIS RELIEF, HE SHOULD NOT
22 HAVE BEEN PLACED IN BMD AROUND ANY OF THE INMATES WITH
23 NON-SENSE.

24
25 5/30/08
DATED:

26 MICHAEL LYNN WATERS
Michael Lynn Waters
27 SIGNATURE